

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1471

Introduced by Assembly Member Eng

February 27, 2009

~~An act to add Article 6.95 (commencing with Section 20209.45) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, and to amend Section 215.5 of the Streets and Highways Code, relating to design-build procurement. An act to amend Sections 20321 and 20341 of the Public Contract Code, and to amend Sections 130051.11 and 130232 of the Public Utilities Code, relating to procurement.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1471, as amended, Eng. ~~Design-build procurement.~~ *Procurement:* Los Angeles County Metropolitan Transportation Authority.

The County Transportation Commissions Act provides for the creation of county transportation commissions and authorities in 5 counties, including the Los Angeles County Metropolitan Transportation Authority, with specified powers and duties relative to transportation planning, programming, and operations. Existing law specifies certain procurement procedures applicable to these agencies, with certain procedures applicable solely to the Los Angeles County Metropolitan Transportation Authority.

Existing law generally provides that purchase by the Los Angeles County Metropolitan Transportation Authority or another county transportation commission of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure required exceeds \$25,000, shall be by contract let to the lowest responsible bidder, with certain exceptions.

This bill would delete a duplicate provision relating to the Los Angeles County Metropolitan Transportation Authority in a provision of the Public Contract Code governing the contracting procedures of the Sacramento Regional Transit District. The bill would delete an unnecessary reference to the authority in a provision of the Public Contract Code governing the contracting procedures of 2 transit development boards in San Diego County.

This bill would also authorize the Los Angeles County Metropolitan Transportation Authority to purchase supplies, equipment, and materials from a public auction sale using the procedures established for all other participants in the auction. The bill would authorize the authority to participate in a cooperative procurement agreement with other public agencies under specified conditions.

~~Existing law makes the Department of Transportation responsible for improving and maintaining the state highway system, including the development and implementation of a system of priorities for ranking the need for installation of noise attenuation barriers along freeways in the state. Under existing law, until January 1, 2010, the Los Angeles County Metropolitan Transportation Authority, in consultation with the department, is authorized to use a design-build procurement process for the construction of a specified high-occupancy vehicle lane in the County of Los Angeles.~~

~~This bill would authorize the Los Angeles County Metropolitan Transportation Authority to use a design-build procurement process for the construction of soundwalls, as defined, along any freeway or expressway that is located within the jurisdiction of the authority, as specified. The bill would make a conforming change to a related provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 20321 of the Public Contract Code is
- 2 amended to read:
- 3 20321. ~~(a) Except as provided in subdivision (b), contracts~~
- 4 Contracts for the construction of transit works or transit facilities
- 5 in excess of five thousand dollars (\$5,000) shall be awarded to the
- 6 lowest responsible bidder after competitive bidding, except in
- 7 emergency declared by four-fifths vote of the board of the district.

1 ~~(b) Contracts for the construction of transit works or transit~~
2 ~~facilities let by the Los Angeles County Metropolitan~~
3 ~~Transportation Authority in excess of twenty-five thousand dollars~~
4 ~~(\$25,000) shall be awarded to the lowest responsible bidder after~~
5 ~~competitive bidding, except in an emergency declared by four-fifths~~
6 ~~vote of the board of the district.~~

7 *SEC. 2. Section 20341 of the Public Contract Code is amended*
8 *to read:*

9 20341. (a) ~~Except as provided in subdivision (c), contracts~~
10 *Contracts* for construction in excess of fifty thousand dollars
11 (\$50,000) shall be awarded to the lowest responsible bidder
12 submitting a responsive bid after competitive bidding, except in
13 emergency declared by the vote of two-thirds of the membership
14 of the board. If the expected construction contract exceeds one
15 thousand dollars (\$1,000) and does not exceed fifty thousand
16 dollars (\$50,000), the board shall seek a minimum of three
17 quotations, either written or oral, that permit prices and other terms
18 to be compared, and the board shall award the contract to the bidder
19 who submitted the lowest quotation.

20 (b) If no bids are received, the project may be performed by a
21 negotiated contract.

22 ~~(c) This section does not apply to the Los Angeles County~~
23 ~~Metropolitan Transportation Authority.~~

24 *SEC. 3. Section 130051.11 of the Public Utilities Code is*
25 *amended to read:*

26 130051.11. (a) The Los Angeles County Metropolitan
27 Transportation Authority may determine its organizational
28 structure, which may include, but is not limited to, the
29 establishment of departments, divisions, subsidiary units, or similar
30 entities. Any department, division, subsidiary unit, or similar entity
31 established by the authority shall be referred to in this chapter as
32 an “organizational unit.” The authority shall, at a minimum,
33 establish the following organizational units:

34 (1) A transit construction organizational unit to assume the
35 construction responsibilities for all exclusive public mass transit
36 guideway construction projects in Los Angeles County.

37 (2) An operating organizational unit with the following
38 responsibilities:

1 (A) The operating responsibilities of the *former* Southern
2 California Rapid Transit District on all exclusive public mass
3 transit guideway projects in the County of Los Angeles.

4 (B) The operation of bus routes operated by the *former* Southern
5 California Rapid Transit District, and all the duties, obligations,
6 and liabilities of the district relating to those bus routes.

7 (3) A transportation planning and programming organizational
8 unit with all planning responsibilities previously performed by the
9 *former* Southern California Rapid Transit District and the *former*
10 Los Angeles County Transportation Commission.

11 (b) Nothing in this section shall be construed to require specific
12 bus routes to be operated. The authority or the operating
13 organizational unit may make any adjustment with respect to bus
14 routes, bus services, or both, which is within the power of the
15 *former* Los Angeles County Transportation Commission, or the
16 *former* Southern California Rapid Transit District.

17 (c) Any obligations of the *former* Southern California Rapid
18 Transit District arising out of a collective bargaining agreement
19 entered into by the district shall be the exclusive obligations of the
20 Los Angeles County Metropolitan Transportation Authority. It is
21 the intent of the Legislature that the rights or obligations under
22 any collective bargaining agreement in existence on January 1,
23 1993, not be enlarged or diminished by this section or any other
24 provision of the act which added this section.

25 (d) No collective bargaining agreement entered into by the
26 *former* Southern California Rapid Transit District on or after
27 January 1, 1993, shall be effective unless approved by the Los
28 Angeles County Metropolitan Transportation Authority. The
29 authority's approval of an agreement shall cause the agreement to
30 be binding upon the authority.

31 (e) On and after April 1, 1993, any reference to the *former*
32 Southern California Rapid Transit District in Article 10
33 (commencing with Section 30750) of Chapter 5 of Part 3 of
34 Division 10 is deemed to refer to the Los Angeles County
35 Metropolitan Transportation Authority.

36 (f) The Los Angeles County Metropolitan Transportation
37 Authority may administratively delegate to an organizational unit
38 or to its chief executive officer any powers and duties it deems
39 appropriate. Powers and duties which may be delegated to an
40 organizational unit include, but are not limited to, the following:

1 (1) The power of eminent domain.

2 (2) Approval of contracts, except the final approval of labor
3 contracts.

4 (3) Hearing and resolving bid protests.

5 (4) *Preparation of supporting documents and findings, and*
6 *approval of contracts, under Sections 130233, 130234, 130236,*
7 *and 132237 within guidelines adopted by the board of directors.*

8 (g) The Los Angeles County Metropolitan Transportation
9 Authority shall establish a citizens' advisory council pursuant to
10 subdivision (d) of Section 130105.

11 *SEC. 4. Section 130232 of the Public Utilities Code is amended*
12 *to read:*

13 130232. (a) Except as provided in subdivision (f), purchase
14 of all supplies, equipment, and materials, and the construction of
15 all facilities and works, when the expenditure required exceeds
16 twenty-five thousand dollars (\$25,000), shall be by contract let to
17 the lowest responsible bidder. Notice requesting bids shall be
18 published at least once in a newspaper of general circulation. The
19 publication shall be made at least 10 days before the date for the
20 receipt of the bids. The commission, at its discretion, may reject
21 any and all bids and readvertise.

22 (b) Except as provided for in subdivision (f), whenever the
23 expected expenditure required exceeds one thousand dollars
24 (\$1,000), but not twenty-five thousand dollars (\$25,000), the
25 commission shall obtain a minimum of three quotations, either
26 written or oral, that permit prices and terms to be compared.

27 (c) Where the expenditure required by the bid price is less than
28 fifty thousand dollars (\$50,000), the executive director may act
29 for the commission.

30 (d) All bids for construction work submitted pursuant to this
31 section shall be presented under sealed cover and shall be
32 accompanied by one of the following forms of bidder's security:

33 (1) Cash.

34 (2) A cashier's check made payable to the commission.

35 (3) A certified check made payable to the commission.

36 (4) A bidder's bond executed by an admitted surety insurer,
37 made payable to the commission.

38 (e) Upon an award to the lowest bidder, the security of an
39 unsuccessful bidder shall be returned in a reasonable period of

1 time, but in no event shall that security be held by the commission
2 beyond 60 days from the date that the award was made.

3 (f) The following provisions apply only to the Los Angeles
4 County Metropolitan Transportation Authority:

5 (1) The contract shall be let to the lowest responsible bidder or,
6 in the ~~commission's~~ *authority's* discretion, to the responsible bidder
7 who submitted a proposal that provides the best value to the
8 commission on the basis of the factors identified in the solicitation
9 when the purchase price of all supplies, equipment, and materials
10 exceeds one hundred thousand dollars (\$100,000). "Best value"
11 means the overall combination of quality, price, and other elements
12 of a proposal that, when considered together, provide the greatest
13 overall benefit in response to requirements described in the
14 solicitation documents. The contract shall be let to the lowest
15 responsible bidder when the purchase price of the construction of
16 all facilities exceeds twenty-five thousand dollars (\$25,000).

17 (2) The ~~commission~~ *authority* shall obtain a minimum of three
18 quotations, either written or oral, that permit prices and terms to
19 be compared whenever the expected expenditure required exceeds
20 two thousand five hundred dollars (\$2,500), but not one hundred
21 thousand dollars (\$100,000).

22 (3) *The authority may purchase supplies, equipment, and*
23 *materials from a public auction sale, including public auctions*
24 *held via the Internet, using the procedures established for all other*
25 *participants in the public auction.*

26 (4) *The authority may participate in a procurement agreement*
27 *involving other public entities that is identified by a procuring*
28 *public entity or entities as a cooperative procuring agreement*
29 *from which other public entities may make purchases or enter into*
30 *contracts, and the authority may procure, and enter into contracts*
31 *for, items purchased pursuant to that procurement agreement,*
32 *notwithstanding that the authority may not be the procuring public*
33 *entity, provided the procurement agreement is awarded or entered*
34 *into by either of the following:*

35 (A) *One or more public entities or an organization of public*
36 *entities, which may include the authority.*

37 (B) *A federal, state, or local public entity.*

38 ~~SECTION 1. Article 6.95 (commencing with Section 20209.45)~~
39 ~~is added to Chapter 1 of Part 3 of Division 2 of the Public Contract~~
40 ~~Code, to read:~~

1 Article 6.95. ~~Design-Build Contracts for Soundwalls~~

2
3 ~~20209.45. (a) The authority may utilize the design-build~~
4 ~~procurement method for the construction of soundwalls along any~~
5 ~~freeway or expressway that is located within the jurisdiction of~~
6 ~~the authority, so long as that construction comports with existing~~
7 ~~department design standards.~~

8 ~~(b) For purposes of this article:~~

9 ~~(1) "Authority" means the Los Angeles County Metropolitan~~
10 ~~Transportation Authority.~~

11 ~~(2) "Department" means the Department of Transportation.~~

12 ~~(3) "Design-build" means a procurement process in which both~~
13 ~~the design and construction of a project are procured from a~~
14 ~~design-build entity.~~

15 ~~(4) "Design-build entity" means a partnership, corporation, or~~
16 ~~other legal entity that is able to provide appropriately licensed~~
17 ~~contracting, architectural, and engineering services as needed~~
18 ~~pursuant to a design-build contract.~~

19 ~~(5) "Soundwall" means a wall constructed of concrete panels,~~
20 ~~masonry blocks, wood boards or panels, or other materials, that~~
21 ~~serves as a noise attenuation barrier, as that term is used in Section~~
22 ~~215.5 of the Streets and Highways Code.~~

23 ~~SEC. 2. Section 215.5 of the Streets and Highways Code is~~
24 ~~amended to read:~~

25 ~~215.5. (a) The department shall develop and implement a~~
26 ~~system of priorities for ranking the need for installation of noise~~
27 ~~attenuation barriers along freeways in the California freeway and~~
28 ~~expressway system. In establishing a priority system, the~~
29 ~~department shall give the highest consideration to residential areas~~
30 ~~which were developed prior to the opening of the freeway. If~~
31 ~~alterations have been made to the freeway since its original opening~~
32 ~~which result in a significant and measurable increase in ambient~~
33 ~~noise levels, the opening date for that segment of the freeway, for~~
34 ~~the purposes of determining priorities under this section, is the~~
35 ~~completion date of that alteration project. Other criteria for~~
36 ~~determining priorities shall include the existing and future intensity~~
37 ~~of sound generated by the freeway, the increase in traffic flow~~
38 ~~since the original construction of the freeway, the cost of building~~
39 ~~the soundwall in relation to the expected noise reduction, the~~
40 ~~number of persons living in close proximity to the freeway, and~~

1 whether a majority of the occupants in close proximity to the
2 freeway resided there prior to the time the freeway routing was
3 adopted by the commission. The city or county in which the
4 residential area is located shall be responsible for providing
5 documentation to the department on the percentage of original
6 occupants still residing along the freeway.

7 The actual cost of construction shall be used in determining the
8 relative priority ranking of projects funded and constructed
9 pursuant to subdivision (d).

10 (b) When all freeways have been ranked in priority order, the
11 department shall, consistent with available funding, include in its
12 proposed state transportation improvement program, a program
13 of construction of noise attenuation barriers beginning with the
14 highest priority.

15 In preparing the annual priority list, the department shall not add
16 any new project to the list ahead of a project that has been funded
17 by a city or county, or by any other public agency using public
18 funds, and is awaiting state reimbursement pursuant to subdivision
19 (d).

20 (c) The commission shall include in the estimate adopted
21 pursuant to Section 14525 of the Government Code an annual and
22 five-year estimate of funds estimated to be available for noise
23 attenuation barriers along freeways. If any city or county constructs
24 a noise attenuation barrier along a freeway pursuant to subdivision
25 (d), the commission shall allocate funds for the project in the fiscal
26 year the project would have been eligible for funding based on the
27 department's priority list and the commission's fund estimate at
28 the time of approval of the project pursuant to subdivision (d).

29 (d) If any city, county, or public agency constructs a noise
30 attenuation barrier along a freeway using public funds prior to the
31 time that the barrier reaches a high enough priority for state
32 funding, then, when the funding priority is reached, the department
33 shall reimburse the city, county, or public agency without interest
34 for the cost of construction, but the reimbursement may not exceed
35 the cost of the department to construct the barriers. Reimbursement
36 shall be made only if the city, county, or public agency constructs
37 the noise attenuation barrier to the standards approved by the
38 department, follows bidding and contracting procedures approved

- 1 by the department or as specified in Section 20209.45 of the Public
- 2 Contract Code, and the project is approved by the commission.

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